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16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 (SAN FRANCISCO DIVISION)

19 IN RE: CATHODE RAY TUBE (CRT)  
20 ANTITRUST LITIGATION

Case No. 07-5944 SC  
MDL No. 1917

21 This Document Relates to  
22 Case No. 13-cv-1173-SC (N.D. Cal.)

23 *Sharp Electronics Corporation; Sharp*  
24 *Electronics Manufacturing Company Of*  
25 *America, Inc.,*

26 Plaintiffs,

27 v.

28 *Hitachi, Ltd., et al.,*

Defendants.

**THE TOSHIBA DEFENDANTS'  
REPLY MEMORANDUM IN  
SUPPORT OF THEIR MOTION *IN*  
*LIMINE* TO EXCLUDE EVIDENCE  
OF TOSHIBA'S SALES TO SHARP  
CORPORATION**

**ORAL ARGUMENT REQUESTED**

Date: August 7, 2015

Time: 10:00 a.m.

Judge: Hon. Samuel Conti

**REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**

THE TOSHIBA DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION *IN LIMINE*  
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**I. INTRODUCTION**

In its opposition, Sharp admits that it is precluded from offering evidence or argument that it suffered damages from its purchases of CRTs from the Toshiba Defendants, but Sharp nonetheless maintains that it should be able to present evidence at trial that such purchases by Sharp from Toshiba took place. Sharp's Opposition ("Opp."), Dkt. No. 3695, at 1. This contortion is a thinly veiled attempt to circumvent the Court's March 13, 2014 Order holding that claims related to purchases under the BTA must be litigated in Japan (Dkt. No. 2435). Allowing such evidence at trial would undermine the BTA, confuse the jury, and unfairly prejudice the Toshiba Defendants. Accordingly, the Court should grant the Toshiba Defendants' motion *in limine* and preclude Sharp from offering evidence or argument regarding Sharp's purchases of CRTs from the Toshiba Defendants, as well as any evidence or argument regarding Sharp's alleged damages resulting from those purchases.

**II. ARGUMENT****A. Sharp Should Be Precluded From Presenting Evidence That Circumvents The Court's March 13, 2014 Order**

In its opposition, Sharp asserts that there are various scenarios that may develop at trial that may require Sharp to provide evidence to the jury that it purchased CRTs from the Toshiba Defendants. Opp. at 3-5. None of these reasons justifies denying the Toshiba Defendants' motion *in limine*, let alone undermining the Court's March 13, 2014 Order.

The purpose of a motion *in limine* is to "avoid the futile attempt of 'unringing the bell' when jurors have seen or heard inadmissible evidence, even when stricken from the record." *Colton Crane Company, LLC v. Terex Cranes Wilmington, Inc., et al.*, No. CV 08-8525 PSG (PJWX), 2010 WL 2035800, at \*1 (C.D. Cal. May 19, 2010) (quoting *Brodit v. Cambra*, 350 F.3d 985, 1004-5 (9th Cir. 2003)). Allowing Sharp to present evidence regarding its purchases from the Toshiba Defendants, regardless of the pretense under which Sharp asserts such evidence can be presented, will "ring the bell" for the jurors regarding issues the Court has already determined must be litigated in Japan (*i.e.*, whether Sharp's purchases from the Toshiba Defendants were affected by the alleged cartel and whether Sharp should be

1 compensated for the Toshiba Defendants' alleged wrongdoing based upon those purchases).  
2 See Order Granting Sharp's Motion for Leave to Amend, Dkt. 2612, at 2-3 ("litigation related  
3 to purchase orders under the BTA [is] to be conducted in Japan").

4 **First**, Sharp asserts that it may need to provide evidence showing that it was a  
5 customer of the Toshiba Defendants because such evidence can also purportedly show that the  
6 Toshiba Defendants participated in the alleged cartel, an element that Sharp must substantiate  
7 in order to prove its joint-and-several liability claims against the Toshiba Defendants. See  
8 Opp. at 3. Sharp identifies three documents that it would propose to use (Benson Decl. Ex. 1-  
9 3), but ignores that presenting any of those documents would undermine the Court's March  
10 13, 2014 Order because showing the jury that Sharp purchased CRTs from Toshiba also  
11 implicitly introduces questions as to whether Sharp was injured by those purchases. See Dkt.  
12 No. 2435; see also Dkt. No. 2612, at 2-3.

13 Moreover, Sharp seemingly asserts that if the Court prevents Sharp from introducing  
14 these documents then it will be unable to establish its joint-and-several liability claims against  
15 the Toshiba Defendants. But, by Sharp's own admission, evidence reflecting Sharp's  
16 customer-supplier relationship with the Toshiba Defendants only constitutes as "**some**" of the  
17 evidence available to Sharp to prove the Toshiba Defendants' participation in the alleged  
18 conspiracy. Opp. at 3 (emphasis added). Given that Sharp claims that the Toshiba  
19 Defendants participated in over fifty bilateral and group meetings in furtherance of the alleged  
20 cartel (Sharp Second Am. Compl., Dkt. No. 2621, ¶191), it has no need to rely on the subset  
21 of such purported evidence that specifically refers to the Sharp-Toshiba relationship.

22 **Second**, Sharp argues that it may need to present evidence of the Toshiba Defendants'  
23 sales to Sharp in order to prove that Sharp was damaged by overcharges on purchases from  
24 non-Toshiba defendants and co-conspirators. Opp. at 4. More specifically, Sharp states that it  
25 may need to present such evidence in order to: (1) explain Dr. Hausman's overcharge  
26 calculations; and (2) defend Dr. Hausman's damages calculations. *Id.* at 4-5.

27 Regarding Dr. Hausman's overcharge calculations, Sharp states that it will "offer  
28 evidence of its overall CRT purchase data," but does not specify why doing so justifies

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1 presenting evidence of the Toshiba Defendants' sales to Sharp. Opp. at 4. Indeed, Sharp  
 2 states that Dr. Hausman's purchase data includes the prices that Sharp paid in purchasing  
 3 CRTs from "all sellers — including entities *like* Toshiba from whom Sharp is not seeking  
 4 damages in this litigation . . . ." *Id.* (emphasis added). Because Sharp can present evidence  
 5 on other sellers that are similarly situated as the Toshiba Defendants, there is no need for  
 6 Sharp to present evidence of its purchases from the Toshiba Defendants to substantiate and  
 7 explain the scope and meaning of Dr. Hausman's CRT purchase data. Nowhere does Sharp  
 8 contend that Dr. Hausman's inclusion of data regarding the Toshiba Defendants' sales to  
 9 Sharp in his model requires him to specifically refer to that data in his testimony.

10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED] does not justify denying the Toshiba  
 15 Defendants' motion *in limine* now. Indeed, Courts consistently grant motions *in limine* with  
 16 the caveat that subsequent actions or arguments at trial may render the precluded evidence  
 17 admissible. *See Keytrack, Inc. v. Key Register, LLC*, No. C 03-00870 WHA, 2004 WL  
 18 2944043, at \*1 (N.D. Cal. Mar. 30, 2004) ("If evidence has been excluded, counsel should  
 19 take care to avoid 'opening the door' at trial as to allow the evidence."); *Hill v. Novartis*  
 20 *Pharm. Corp.*, 944 F. Supp. 2d 943, 948 (E.D. Cal. 2013) (explaining that the exclusion of  
 21 evidence does not preclude the court from reconsidering the issue based on a showing of new  
 22 circumstances). If Sharp's scenario arises at trial, Sharp should raise its arguments then.

23 **Third**, Sharp argues that the customer-supplier relationship between Sharp and the  
 24 Toshiba Defendants is relevant in order to show that the Toshiba Defendants made sales in the  
 25 United States and had an interest in the North American CPT market. Opp. at 5. This  
 26 argument is also deficient because the record is replete with evidence substantiating the fact  
 27 that the Toshiba Defendants sold CRTs in the United States. There is simply no need for  
 28

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1 Sharp to rely upon cumulative documents revealing sales *between* the Toshiba Defendants and  
2 Sharp in violation of the Court's March 13, 2014 Order.

3 **B. The Unfair Prejudice Of Allowing Evidence Regarding Sharp's**  
4 **Purchases From Toshiba Far Outweighs Any Corresponding Probative**  
5 **Value**

6 Sharp also makes a cursory argument that evidence of Sharp's purchases from the  
7 Toshiba Defendants should not be excluded under Rule 403 of the Federal Rules of Evidence.  
8 Opp. at 6. Contrary to Sharp's position, the introduction of evidence regarding Sharp's  
9 purchases from the Toshiba Defendants would confuse the jury as to the significance of the  
10 relationship between the two companies and unfairly prejudice the Toshiba Defendants by  
11 creating the very real risk they will be assigned liability for claims asserted by Sharp that the  
12 Court has already dismissed. *See* Fed. R. Evid. 403 ("The court may exclude evidence if its  
13 probative value is substantially outweighed by a danger of one or more of the following:  
14 unfair prejudice, confusing the issues, misleading the jury . . . ."); *see also United States v.*  
15 *Hankey*, 2013 F.3d 1160, 1172 (9th Cir. 2000) ("Relevant evidence may be excluded under  
16 Rule 403 only if its probative value is substantially outweighed by one or more of the  
17 articulated dangers or considerations."). Accordingly, it is clear that any limited probative  
18 value provided by evidence of Sharp's purchases from Toshiba is substantially outweighed by  
19 the unfair prejudice of exposing Toshiba to claims and damages that must be adjudicated in  
20 Japan.

21 Sharp acknowledges that there is a risk of the jury awarding damages to Sharp based  
22 upon evidence of its commerce with the Toshiba Defendants. Opp. at 6 n.2. According to  
23 Sharp, the risk of improper damages being assigned to Toshiba can be remedied by jury  
24 instructions or verdict forms, but the authority relied upon by Sharp (*id.*) does not support this  
25 argument. In *Galaxy Computer Services, Inc. v. Baker*, 325 B.R. 544, 551-52 (E.D. Va.  
26 2005), the court held that jury instructions were sufficient to address concerns over the  
27 allocation of damages when the probative value of the evidence at issue is *not* substantially  
28 outweighed by its prejudicial effect. Here, as discussed, the evidence of Sharp's purchases

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1 from Toshiba should be excluded under Rule 403. Accordingly, Sharp's proposal of  
2 introducing jury instructions or verdict forms to remedy concerns of unfair prejudice should  
3 be disregarded.

4 Sharp also argues that the Toshiba Defendants' motion is vague and premature  
5 because the Court will be in a better position later in the litigation to assess the probative and  
6 prejudicial value of evidence regarding Sharp's purchases of CRTs from the Toshiba  
7 Defendants. Opp. at 5. This argument, once again, misconstrues the March 13, 2014 Order.  
8 The Court has already determined, with the assistance of extensive briefing by the parties, that  
9 Sharp may not litigate its CRT purchases from the Toshiba Defendants in this jurisdiction.  
10 Accordingly, the Toshiba Defendants, through their motion *in limine*, seek a timely and  
11 targeted order precluding Sharp from presenting evidence at trial that will raise the very issues  
12 that the Court has already determined must be litigated in Japan. Accordingly, the Toshiba  
13 Defendants' motion does not analogize to the improperly vague (*Colton*, 2010 WL 2035800,  
14 at \*1), broad (*Liberal v. Estrada*, 2011 WL 3956068, at \*5 (N.D. Cal. Sept. 7, 2011)), or  
15 premature (*Server Tech., Inc. v. Am. Power Conversion Corp.*, 2014 WL 1308617, at \*6 (D.  
16 Nev. Mar. 31, 2014)), motions discussed in the caselaw relied on by Sharp.

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1  
2 **III. CONCLUSION**

3 For these reasons and the reasons set forth in the Toshiba Defendants' motion *in*  
4 *limine*, the Court should grant the motion *in limine* and preclude the Sharp Plaintiffs from  
5 offering evidence or argument regarding Sharp's purchase of CRTs from the Toshiba  
6 Defendants, as well as any evidence or argument regarding Sharp's alleged damages resulting  
7 from those purchases.

8  
9 Dated: March 6, 2015

Respectfully submitted,

**WHITE & CASE LLP**

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12 By: /s/ Lucius B. Lau

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**CERTIFICATE OF SERVICE**

On March 6, 2015, I caused a copy of “THE TOSHIBA DEFENDANTS’ REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION *IN LIMINE* TO EXCLUDE EVIDENCE OF TOSHIBA’S SALES TO SHARP CORPORATION” to be served via the Court’s Electronic Case Filing System, which constitutes service in this action pursuant to the Court’s order of September 29, 2008.

/s/ Lucius B. Lau

Lucius B. Lau

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